

Decision No. 80283

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:
 ACCURATE CARTAGE AND WAREHOUSING, INC.,
 a corporation, to sell, and CAPITOL
 WAREHOUSE SERVICES, INC., a corporation
 to buy, public utility warehouse operating
 authority, pursuant to Section 851, et seq.,
 and Section 1052 of the California Public
 Utilities Code.

Application No. 53143
 (Filed Feb. 11, 1972)

John Paul Fisher, Attorney at Law, for applicants.
Louis A. Belmonte, for D. H. Overmeyer Co., Inc.:
and Walter J. Bozek, for Bay Cities Warehouse Co.,
 Inc.; protestants.
Peter N. Kujachich, for the Commission staff.

O P I N I O N

Accurate Cartage and Warehousing, Inc., requests authority to sell and transfer, and Capitol Warehouse Services, Inc., requests authority to purchase and acquire, a certificate of public convenience and necessity authorizing operations as a public utility warehouseman in 130,000 square feet of storage space in San Francisco. Applicant purchaser also requests that upon approval of the transfer that the authority to operate pursuant to said certificate be transferred from San Francisco to Hayward.

Public hearing was held before Examiner Daly on June 20, 1972, at San Francisco, and the matter was taken under submission.

The certificate was granted by Decision No. 76007, dated August 12, 1969, in Application No. 51084, as amended by Decision No. 76100, dated October 10, 1969, and Decision No. 76277, dated October 15, 1969. The agreed cash consideration is \$16,000.

Applicant seller is presently conducting public utility warehouse operations in Los Angeles and San Francisco. According to its president, the San Francisco operations are being conducted at an average monthly loss of \$2,900 because of the inadequacies of the existing facilities. Applicant seller proposes to discontinue public warehouse operations in San Francisco and to use said facilities in conjunction with its trucking operations.

Because of the congested conditions within San Francisco and the difficulty experienced in operating large trucks and trailers within the city, applicant purchaser proposes to transfer its proposed public utility warehouse service to Hayward. The Hayward facility, which was constructed in 1964, consists of a single-story building with 170,000 square feet of storage space, fully sprinklered, and is served by rail. The property is owned by a general partnership, in which the president of applicant purchaser has a 10 percent interest.

At the present time, applicant purchaser is using said facilities for the purpose of storing the property of four accounts pursuant to written agreements. As of March 31, 1972, applicant purchaser indicated a net worth in the amount of \$25,000.

The president of applicant purchaser commenced in the warehouse business in 1968 as an employee of D. N. Overmeyer Co., Inc., and resigned from said company in 1971.

Three public witnesses, representing companies that have a need for public storage of their goods, testified in support of applicant purchaser's proposed service in Hayward.

The application was protested by D. N. Overmeyer Co., Inc. (Overmeyer) and Bay Cities Warehouse Co., Inc. (Bay Cities). Overmeyer, which conducts warehouse operations throughout the state, is authorized to operate in 20,000 square feet of space in San Leandro and 4,700 square feet of space in Hayward.^{1/} In each

^{1/} In each instance, this is exclusive of the additional 50,000 square feet of expansion permissible under Section 1051 of the Public Utilities Code.

city the facilities consist of single story, tilt-up concrete buildings, fully sprinklered with rail service. The general manager of Overmeyer testified that the San Leandro warehouse is presently serving approximately forty accounts in 150,000 square feet of space. He also testified that the Hayward warehouse space has been rented exclusively to J. C. Penney Company for the past two years pursuant to a written lease. According to this witness, the lease has expired and J. C. Penney Company will continue to use the Hayward facilities on a month to month basis until such time as its own facilities are ready for occupancy. At such time, the Hayward warehouse assertedly will be available for public use.

Bay Cities for many years has operated a public warehouse in 80,000 square feet of space in Emeryville. Because of the inadequacies of the Emeryville building, the protestant sought and was authorized to operate as a public utility warehouseman in 55,000 square feet of space in Hayward. (Decision No. 78574, dated April 20, 1971, in Application No. 52461.) The Hayward warehouse is a single story, tilt-up concrete building, fully sprinklered and is on rail. Upon the construction of the Hayward warehouse, a number of accounts were transferred from the Emeryville warehouse to the Hayward facilities. Approximately 25 accounts are served at the Emeryville warehouse, and by restacking the presently stored goods, the President of Bay Cities was of the opinion that an additional 40,000 square feet of space could be made available. Approximately 35 accounts are being served at the Hayward warehouse where there is an existing vacancy of 10,000 square feet of space.

After consideration the Commission finds that:

1. Although the proposed sale of the certificate would not be adverse to the public interest, the proposed transfer of the certificate from San Francisco to Hayward would introduce a new public utility warehouse service in a city in which Overmeyer and Bay Cities are also authorized to serve.

2. It does not appear that the introduction of a new public utility warehouse will have an adverse effect upon the San Leandro operations of Overmeyer, which is presently being operated in excess of its authorized capacity, nor its Hayward operation, which has been leased to J. C. Penney Company for the past two years.

3. In less than a year, the new facilities of Bay Cities in Hayward are operating within 10,000 square feet of full capacity.

4. The record indicates that there are companies that presently desire to use the services of applicant as a public utility warehouseman in Hayward.

5. Public convenience and necessity no longer require the operation of Accurate Cartage and Warehousing, Inc., in San Francisco.

6. Public convenience and necessity require the operation of Capitol Warehousing, Inc., as a public utility warehouseman in 130,000 square feet of space in Hayward.

The Commission concludes that the application should be granted subject to the condition that Accurate Cartage and Warehousing, Inc., shall pay the cost of moving the property of its present customers to a warehouse of its customers' choice within the San Francisco Bay Area.

Capitol Warehouse Services, Inc., is hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, these rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. On or before December 1, 1972, and upon the condition that Accurate Cartage and Warehousing, Inc., shall pay the cost of moving the property of its present customers to a warehouse of its customers' choice in the San Francisco Bay Area, Accurate Cartage and Warehousing, Inc., may sell and transfer, and Capitol Warehouse Services, Inc., may purchase and acquire, the operative rights referred to in the application.

2. Within thirty days after the consummation of the transfer herein authorized, purchaser shall notify the Commission, in writing, of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.

3. Purchaser shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the warehouse operations herein to show that it has adopted or established, as its own, said rates and rules. The tariff filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the consummation of the transfer herein authorized. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 61-A. Failure to comply with and observe the provisions of General Order No. 61-A may result in a cancellation of the operating authority granted by this decision.

4. On or before the end of the third month after the consummation of the transfer as herein authorized, purchaser shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to

the operations of the seller for the period commencing with the first day of the current fiscal year to and including the effective date of the transfer.

5. In the event the transfer authorized in paragraph 1 hereof is consummated, a certificate of public convenience and necessity is granted to Capitol Warehouse Services, Inc., a corporation, as a public utility warehouseman, as defined in Section 239 (b) of the Public Utilities Code, for the operation of storage or warehouse floor space as set forth in Appendix A attached hereto and made a part hereof.

6. The certificate of public convenience and necessity granted in paragraph 5 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 76007, as amended by Decisions Nos. 76100 and 76277 which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3 hereof.

7. Within thirty days after the transfer herein authorized is consummated, purchaser shall file a written acceptance of the certificate herein granted. Purchaser is placed on notice that, if it accepts the certificate of public convenience and necessity

herein granted, it will be required, among other things, to file annual reports of its operations.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 25th day of JULY, 1972.

William Symas J. President

[Signature]
[Signature]
Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Appendix A

CAPITOL WAREHOUSE SERVICES, INC.
(a corporation)

Capitol Warehouse Services, Inc., a corporation, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to operate as a public utility warehouseman as defined in Section 239(b) of the Public Utilities Code for the operation of storage or warehouse floor space as follows:

<u>Location</u>	<u>Number of Square Feet of Floor Space</u>
Hayward	130,000

(The floor space shown is exclusive
of the expansion permissible under
Section 1051 of the Public Utilities
Code.)

(END OF APPENDIX A)

Issued by California Public Utilities Commission

Decision No. 86283, Application No. 53143.